1943 **File No.** O Trusts/43

Legal Department

A **BRANCH**

Subject:—

Opinions Under the

Indian Trusts Act 1882

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C O N T E N T S.

Legal Department File No. O.Trusts/1943.

Sr.No.	Compilation No.	Subject.	Pages.
		Indian Trust Act,1882.	
1	O.No.452/19-1-43.	Since the Post of the Chief Secy. to Govt. has been kept vacant, whether the Bom. Presidency War and Relief Fund Board can pass another resolution authorising any one of the trustees to draw interest and to sell promissory notes as the occasions may arise.-	1-2
2	O.No.2672 - Dt. 13-4-43.	Whether the proposal made by the Bishop of Bombay in his letter dt. 31-3-43 can be sanctioned consistently with the conditions in the Trust deed.-	3-4
3	R.I.No.5527 dt. 5-5-43. O.No.4214 dt.15-6-43.	Whether the investment of the Fund of the Blind Relief Association, Bijapur in the Bijapur Municipal debentures would be investment in the securities mentioned in sec.20(d).	5-8
	O.No.5042 dt.23-7-43.	Whether extra remuneration will be admissible to the "Registrars" appointed under (i) Musselman Wakf Act, (ii) Bom. Public Trusts Registration Act and (iii) Parsee Pub. Tr. Regis. Act, who are performing duties imposed by law.-	9-12

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5	O.No.5936/ 2-9-43.	Whether there is any objection to the securities of Rs.15,000 of the Jairajbhoy Peerbhoy Girl's School Endowment Fund being transferred to the Schools Committee of the Bom, Municipal Corporation.-	13-14.

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11.7.

PKB 26/7

NRD 26/7

Office of the R.L.A.

The power to co-opt persons to fill vacancies vests in the Board of Trustees administering the Bombay Presidency War and Relief Fund. The Chief Secretary to Government of Bombay is one of the trustees. The post of the Chief Secretary to Government being kept vacant, a vacancy on the Board of Trustees would bedeemed to have arisen and it would be competent to the Board of trustees to co-opt the Secretary Political and Services Department in the vacancy. In the absence of such co-option it would not be competent for the Secretary Political and Service Department to function as one of the trustees.

2. It appears from the resolution of the Board at p. 266 of the Minute book that the account is opened with the Imperial Bank of India and the funds are invested in promissorynotes standing in the name of all the trustees and the trustees have authorized the Chief Secretary to the government of Bombay to draw interest and to sell promissorynotes as occasion mayarise. Since the post of the Chief Secretary to Government has been kept vacant, the Board will have to pass another resolution authorising any one of the trustees to draw interest and to sell promissory notes as the occasion may arise. The view taken bythe Secretary Political and Services Department on both points at p. 140 ante is correct.

Id/- P.H.M.
18/1
Remembrancer of Legal Affairs.

U.R. to P. and S.D.No.452, dated 19th January 1943.

RHB.
11.7.

Office of the R.L.A.

All that piece or parcel of land together with all buildings within the Cantonment of Poona and being part of a compound known as the Widows' Home Compound has been granted by Government under a trust deed dated 18th August 1925 to the Lord Bishop of Bombayfor and on behalf of the Committee of the League of Mercy for the purposes of the Poona Branch of the said League of Mercy. In his letter No. 88 dated 31st August 1942 the Lord Bishop of Bombay states that as due to the diversion of subscriptions from ordinary charities to War Charities, the League of Mercy Poona Branch has been unable to finance its work in the building, it desires to let a part of the building to provide funds for the maintenance of work in the rest of the building. The question raised for the consideration of the R.L.A. is whether the proposal made by the Bishop of Bombay in his letter dated 31st August 1943 can be sanctioned consistently with the conditions in the Trust deed.

2. As stated in the preamble of the Trust deed dated 18th August 1925 the premises are to be held for the purposes of the Poona Branch of the League of Mercy and to be used occupied and enjoyd by the Poona Branch in the manner and on the conditions specified therein. One of these conditions is that the premises and buildings should be used for the purposes of the Poona Branch of the said League of Mercy in accordance with the rules and regulations for the time being sanctioned or prescribed by the Government of Bombay This is subject to the proviso that if the said premises shall at any time hereafter cease to be used for the purposes of the Poona Branch of the said League of Mercy the said premises and all other buildings which may be on the said premises shall be used in the manner...

manner and on the conditions as far as may be as are herein-before mentioned and on such further conditions as Government may impose for such other charitable object as may be approved by Government. No rules or regulations have been made or prescribed by Government. Nor does the proposal of the Lord Bishop of Bombay involve the discontinuance of the use of the whole of the premises for the purposes of the League of Mercy as contemplated by the proviso. Consequentlythe question would reduce itself to this: Whether the lease of a part of the premises as proposed would be opposed to the purposes of the League of Mercyas stated in the Rules thereof are:-

(a) To aid, retrieve, and succour fallen European and Eurasian women and girls.

(b) To rescue and assist young women and girls from dangerous surroundings calculated to bring about their fall or leadto their moral ruin.

(c) To afford shelter and assistance to such women and girls as from any cause find themselves temporarilystranded and unable to help themselv

(d) To provide and manage Homes Schools for children found destitute or neglected among evil surroundin

(e) To give effect to such other projects or methods for the protection and help of European and Euras... women and girls as the Committee may from time to time adopt.

(f) To engage and maintain workers, agents, servants and staff, and to purchase, lease, hire or otherwise acquire any immoveable or moveable property and to let sell exchange or otherwise dispose of the same for such consideration etc. and to carryout all such works and schemes as are necessary for the attainment of the above objects or any of them.

(g) To do all such other things as may be deemed incidental or conducive to the attainment of the above objects or any of them.

Object (f) provides for powers of the League of MercyCommittee and is not reallyone of the purposes of the League of Mercy. Its real purposes are (a) to (e) and (g). Although the lease of part of the premises as proposed is not, strictly speaking, one of the purposes of the League of Mercy still if the rent realised thereby is used for carrying out any of those purposes,

there would not be any breach of trust. Consequently the proposal made by the Lord Bishop of Bombay can be sanctioned consistently with the conditions in the Trust Deed.

Id/- P.M.M.
12/4.

Remembrancer of Legal Affairs.

U.R. to E.D.No.2672, dated the 13th April 1943.

RHB.
11.7.

5527 dated 5.8.43.

2. With a view to get a higher rate of interest the Blind Relief Association, Bijapur, sold its investments of Rs.58000/- in Govt. securities, and invested them in debentures issued bythe Bijapur Municipality in 1936. The then G.P. at Bijapur in his opinion No. 273, dated 19/6/1936, stated that as the debentures were issued under the provisions of the Local Authorities Loans Act (India Act IX of 1914 the securities came within the scope of section 20 of the Indian Trusts Act 1882. During the examination of the accounts, the Examiner Local Fund Accounts has taken objection (vide his note dated 22.10.1942) that the investment in the debentures issued bythe Bijapur Municipalityis not in consonance with the provisions of section 20 of the Trusts Act, 1882. The present G.P. Bijapur is also of the same opinion (vide his opinion on page 9).

4. The question for the consideration of the R.L.A. is whether the investment of the Fund of the Blind Relief Association Bijapur in the Bijapur Municipal debentures would be an investment in the Securities mentioned in section 20(d) of the Indian Trust Act.

RHB.
11.7.

Office of the R.L.A.

The view expressed by the District Government Pleader, Bijapur, in his No. 772 dated 7th December 1942 is correct.

2. Attention of the General Department is invited to R.L.A.'s U.O.R. to G.D. No. 2074 dated 10th April 1933 and also to opinion No. 1900 dated 4th March 194 a copy of which is appended.

Id/- P.N.M.
14/6.

Remembrancer of Legal Affairs.

U.R. to G.D., No. 4214, dated 15th June 1943.

RHB.
11.7.

Submitted with reference to Secy. R.D.'s note on page 147-48 ante.

2. The administration of the Mussalman Wakf Act (1923) the Bombay Public Trusts Registration Act 1935and the Parsee Public Trusts Registration Act 1936 in Bombay has been entrusted to the three judges of the Small causes Court, Bombay, and they have been appointed as 'Courts' Registrars' under the different Act abovementioned. The duties performed bythem are outside the purview of their normal duties. Funds have been created under these Acts and are to be utilised for the purpose of meeting the charges of the expenses of the registration, administration and superintendence of the Trusts concerned, and scheme is being drawn for emunerating the members of the staff and the offices, who do the work under these Acts. The Secretary, R.D. is of opinion that the 'Registrars' appointed under these Acts are performing duties imposed by law and hence no extra remuneration will be admissible to them. The R.L.A., is requested to advise whether this view is correct.

3. Un der rule 351(a) of the B.C.S.Rs. (Part I, page115, Govt. may permit a Govt. servant, if it besatisfied that this can be done without detriment to his official duties or responsibilities, to perform a specified service or services for a private person or bodyor for a public body... ..., and to receive as remuneration therefore, if the service be material, a non-recurring or recurring fee. Thus it will be seen that when a Govt. servant is permitted to perform duties, outside the purview of his official duties he is entitled to receive fee beyond his usual salary. Now in this case, the judges have been appointed to be 'Courts' under section 2(b) of the Mussalman Wakf Act, and 'registrar' under section 4 of the BombayPublic Trusts, and Parsee

remunerat...

9-10, 10-12.

Parsee Public Trusts Registration Acts.

4. It is true that the duties performed bythem are imposed by Law, but it must be noted that they do not act in the capacity of 'Judges' but as 'Registrars' and in that case the duties so far as these Acts are concerned are outside the purview of their official duties as judges and hence it appears that theywill be entitled to extra remuneration from the respective funds. The Secy. R.D's view does not appear to be correct.

Id/- D.C.K.
8/16.

S.A.S. The view taken by the Secy. R.D. is correct. No remuneration to the judges of the small Causes Court from the Wakf Administration Fund would be admissible under section 6 K of the Mussalman Wakf Act, 1923 Similarly no remuneration to the Registrar from the Parsi Public Trusts Administration Fund under S 17 of the Parsi Public Trusts Registration Act. 1936 the Public Trusts Administration Fund under section 16 of the Bombay Public Trusts Registration Act, 1935 would be admissible.

Office of the R.L.A.

Seen and returned.

2. The view taken by the Secretary. R.D., in his note overleaf is correct. Whether or not provision should be made in the Act for the Judges' remuneration isfor R.D. to consider.

Id/- P.N.H.
20/7.
Remembrancer of Legal Affairs.

U.K. to R.D., No.5012, dated the 23rd July 1943.

RHB.
11.7.

Office of the R.L.A.

It appears that in 1884 Mr. Jairabhoy Peerbhoy offered securities of the value of Rs.15,000/- to Government on the following conditions:

(i) that a Girls' School be established at Chinch Bunder outside the Fort, Bombay to be called "The Jairajbhoy Peerbhoy Girls' School" and the administration of such school be conducted by the Educational Department under Government;

(ii) that suitable premises at Chinch Bunder for the school to be so established be rented by Government.

(iii) that instruction in such school be imparted in the vernacular byfemale teachers;

(iv) that the Mahomedan girls attending such school be also taught the Arabic Persian and Hindustani languages and that such instructor may be a male

(v) that the salaries of teachers and all other expenses of the school be paid out of interest of the endowment so far as interest shall extent and that any portion of expenses that may remain uncovered bysuch interest be paid by Government, Government undertaking to conduct such school efficiently and to maintain it permanently.

Government accepted the offer and invested the money in Government securities for the purpose and established the school accordingly. When the Bombay Municipalitytook over the management and maintenance of all primaryschools in Bombay under the Bombay Police Charges Act, 1907, Jairazbh Peerbhoy Girls School was also transferred to the Municipality and the Municipalityhas since been paid the interest on the Government securities in which the endowment sum of Rs.15,000/- has been invested. Mr. JiarajbhoyPeerbhoy had apparently in 1884 agreed to the school "being manged by a local board acting in virtue of legislative enactments". His letter on the point does not seem to have been kept and there is nothing to show that he consented to the endowment amount being transferred to a local authority. The securities which were formerly deposited with the Accountant General and subsequently transferred to the Deputy Controller of

of Currency, Bombay, are at present with the Reserve Bank of India. The question for the consideration of the R. .A. is whether there is anyobjection to the securities of Rs.15,000 of the Jairajbhoy Peerbhoy Girls' School Endowment Fund being transferred to the Schools Committee of the BombayMunicipal Corporation.

2. There is nothing to show that Mr. Jairajbhoy Peerbhoy authorised Government to transfer the endowment amount to the BombayMunicipality. He merely said that he had no objection to a local authority "Managing" the school. If Government pays the interest on the securities to the Municipality it is possible for the Municipalityto manage the school without owning the securities. No doubt the City of Bombay Municipal Act, 1888, makes the maintenance and control of primaryschools a municipal concern but it does not authorise the proposed transfer of these securities. The City of Bombay Police Charges Act, 1907, now repealed, transferred to the Municipality all buildings used for primary education and vesting in Government but did not deal with the present securities since the securities are trust property and Government the trustee, Government will have to apply to the Court for sanction for the proposed transfer.

Id/- P.N.L.
1/9.
Remembrancer of Legal Affairs.

U.R. to E.D.No.5936, dated the 2nd September 1913.

RHB.
11.7.